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QUEENSLAND POLITICAL CULTURE: EXECUTIVE DOMINANCE TRUMPS CIVIL LIBERTIES

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By Kate Galloway.

Queensland has over recent weeks passed a number of laws declaring guilt by association for those who are members of or associate with “criminal” bikie gangs. Twenty-six gangs have been declared [criminal organisations](#) but a criminal organisation also includes three or more people who have as their purpose engaging in serious criminal activity. Under amendments to the *Criminal Code*, participants in a criminal organisation who are “knowingly present” in a public place with two or more other participants in a criminal organisation, are guilty of an offence charged with a minimum sentence of six months to be served “wholly in a correctional facility”.

A list of addresses – bikie clubhouses (though they are not named as such) – are “prescribed places” under the new laws. It is an offence under the *Criminal Code* for a member of a criminal organisation to enter any prescribed place. It is also an offence to wear or carry clothing and jewellery marked with the insignia or names of a criminal organisation into licenced premises.

New regulations around tattoo parlours will require business owners and tattooists to apply for a licence. They are required to provide fingerprints and palm prints, and may be refused a licence if they are not a “fit and proper person” or it is “contrary to the public interest”. According to [statements](#) by the government, this is to prevent “racketeering”.

Already the media has reported on the implementation of the new laws. A man in a hotel in Mt Isa was ordered to surrender his belt and it was destroyed. A Vietnam Veterans’ motorcycle riding association has been raided – in what a Motorcycle Council spokesperson described as a strategy of “developing rapport” with such lawful groups. Similarly, recreational motorcycle riders have been asked to notify police of their intention to embark on a group ride – to avoid “[harassment](#)”.

In addition to criminalising associations, the *Bail Act 1980* now removes the possibility of bail for participants in a “criminal organisation” unless they can explain why their custody is not justified. In Brisbane, an alleged bikie was granted bail and the Director of Public Prosecutions (DPP) appealed this decision. In an [extraordinary development](#), Justice Fryberg of the Supreme Court of Queensland ordered the appeal be held permanently in abeyance because of the failure of the Crown to clarify statements made by Queensland Premier, Campbell Newman. Mr Newman [was reported as saying](#) he wants the Queensland judiciary to start realising what the community wants and act accordingly. “To protect the community – that’s all the Government is after [and] that is all the Queensland community is after.” The Queensland DPP has now appealed Justice Fryberg’s order.

It is instructive at this point to refer to the [findings](#) of the Fitzgerald Inquiry into corruption in Queensland. Amongst many findings, the Report highlights the importance of the relationship between the executive, including the special role of the Attorney-General, and Parliament but also the process for developing and implementing laws. Fitzgerald took particular note of the complexity of laws relating to criminal justice. What he wrote in his report in 1989 could describe the passage and consequences already observed in the anti-bikie laws today.

Unlike other Australian states and the Commonwealth, Queensland has only one house of parliament and therefore no second house to review legislation. The government has a significant majority which further marginalises the chance for scrutiny of new legislation. Legal academics commenting on the political culture in Queensland since the Fitzgerald Inquiry, have [pointed out that](#):

The problem was — and remains — that Queensland’s political culture is fundamentally shaped by the capacity of the executive government to dominate the state’s unicameral parliament.

The passage of the new anti-bikie provisions was notable for its speed and lack of consultation. Introducing [the bills](#) to Parliament, [the government cited](#) the “urgency” for the measures, and political rhetoric in the media has revolved around the “crisis” of lawlessness in Queensland. The Opposition reportedly received the bills in the afternoon of the day they were to be passed. Debate went on in the House until 3am, and all the bills were passed (ultimately, with Opposition support). The Queensland Law Society has [criticised](#) the lack of opportunity for comment on the bills.

Two decades ago, Fitzgerald’s report pointed out that “there has been no mechanism by which fresh points of view could be expressed.”

The Opposition in Parliament may highlight some matters, but all too often the time and resources available, and sometimes the restricted opportunity of debate, precluded all but superficial consideration and discussion of legislation. Outside comment by interested people and professional associations obviously occurred, but it was limited compared to the time and research facilities available to the public servants. In any case, the bureaucrats had the last word, and wrote the submissions and statements which went to Cabinet, the party room and Parliament.

The present raft of anti-bikie legislation affects foundational rights profoundly. It interferes with freedom of association, reverses the onus of proof, provides for mandatory sentencing markedly disproportionate to the crime, amongst others. That it does so profoundly highlights the need for careful oversight and critique of the proposals.

Jarrold Bleijie, the Attorney-General and Minister for Justice, has come out “unapologetically” to support the laws, as has the Premier. Fitzgerald pointed out that:

The Attorney-General also has primary responsibility for legal advice in relation to matters of public administration and government. The proper performance of such functions is dependent upon independence and impartiality and freedom from party political influences, which is threatened if the Attorney-General is subject to Cabinet control and Parliament is effectively dominated by the Executive.

In Queensland, the risks of partiality were accentuated by the effective amalgamation of the offices of Attorney-General and Minister for Justice...

Additionally,

Problems, when they emerge, tend to be presented as isolated dilemmas with simple solutions, and Governments are often tempted to solve them by passing laws forbidding certain behaviour. This is often done without any real research and without any regard to the ability of the law enforcement system, including the Police, the courts and the prisons, to cope with the burden of extra enforcement.

Passage of such a law usually, however, gives the Minister responsible a sense of accomplishment, leaves the bureaucracy in control, and gives the public an impression that the Government is alert and active. The media rarely examines the issues in any depth, often endorsing the view that problems have simple solutions which can be applied by quick legislation.

What is clear is that little has changed in the culture of executive domination in politics in Queensland. This has resulted in a [raft of regressive laws](#) presented as a simple solution – where there are “no alternative ways” – to an ostensibly isolated dilemma of gang crime, when in fact there are cogent evidence-based reasons why the scheme will not work. As discussed above, already there are unintended consequences, impacting upon law-abiding citizens.

It is dispiriting to say the least that Queensland should be back to where it was two decades ago. This says a lot about the entrenched political culture within a system that still does not seem to have the checks and balances necessary to develop cohesive and sustainable, evidence-based policy and legislation. The culture of executive domination is now playing out in attacks on the judiciary and the legal profession by the most senior members of cabinet, supported by the media.

Democracy is dependent on culture and as the Fitzgerald Inquiry demonstrated, our systems are only as good as the culture supporting them. Culture has the potential to erode the rule of law and the doctrines that support it – the separation of powers and judicial independence, for example. Without cultural change within government or media, it is now up to the citizens of Queensland to inform themselves about good governance, good law, and good law enforcement, and to speak out against breaches of foundational principles of justice. Without a strong voice, civil liberties will continue to regress.

Kate Galloway is a legal academic at James Cook University in Cairns. Her areas of interest include feminist legal theory and justice.

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2 Responses to [Queensland Political Culture: Executive Dominance Trumps Civil Liberties](#)

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[November 11, 2013 at 5:03 pm](#)

I'm not sure but I think this may give too much emphasis to the single house of parliament in Qld.

Howard passed some pretty nasty laws and the federal parliament has two houses.

If culture is the basic problem perhaps this makes the one or two houses less important (?).

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2. Pingback: [My name is Asher Hirsch](#)

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